SASKATCHEWAN

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT 2005 – 007

Saskatchewan Government Insurance

Summary: The Applicant sought the detailed claims history of a vehicle owned by the Applicant. SGI denied access on the basis that would disclose personal information about previous owners of the same vehicle. The Commissioner held that the claims history of a motor vehicle registered in Saskatchewan, once specific identifying information has been severed, is not personal information within the meaning of *The Freedom of Information and Protection of Privacy Act.*

Statutes Cited: *The Freedom of Information and Protection of Privacy Act* [S.S. 1990-91, c. F-22.01 as am], ss. 24, 29(1)
The Highway Traffic Act [S.S. 1986, c. H-3.1 as am], ss. 82, 83, 84
The Vehicle Administration Act [S.S. 1986, c. V-2.1 as am], ss. 8, 9, 93

Authorities Cited: General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance (Sask. C.A.) [1993] S.J. No. 601

I BACKGROUND

[1] The Applicant made an access request to Saskatchewan Government Insurance ("SGI") under *The Freedom of Information and Protection of Privacy Act* ("the Act") for the detailed claims history of the Applicant's 1993 Ford Thunderbird motor vehicle ("the Thunderbird").

[2] On January 12, 2004, SGI denied access on the basis of section 29 of the Act and indicated that providing the information requested would disclose personal information of others.

[3] On January 19, 2004, the Applicant submitted a Request for Review to this office.

[4] On August 4, 2004, SGI provided a written submission to our office. SGI contends as follows:

> *"The claims history sought by* [name of Applicant] *is, in SGI's view, personal information. For example, if the car was purchased in a private transaction, he would likely know the name of the individual he purchased the car from. He may also know how long that person owned the car before he bought it. If SGI provided him with the claims history, even without the name and addresses of the people who filed those claims, he would likely be able to determine how many claims a previous owner had with SGI. This would divulge personal information about that owner, as insurance transactions are, in our view, financial transactions in accordance with subsection 24(1)(b) of the Act."*

[5] The records responsive to the access request can be divided into six "files". Each of the six files or sets of records relate to the Thunderbird. The first two files relate to claims made with respect to the Thunderbird while the Applicant was the registered owner of that vehicle. The other four files relate to the Thunderbird, but when other parties were the registered owner of that vehicle.

[6] SGI took the position that the Applicant was entitled to the two files that relate to a time when he was the registered owner. It took the position that the other files could not be released since that would mean disclosing "personal information" of previous owners of the Thunderbird.

[7] SGI maintained claims files in two different methods. In one method the claim information is entered on SGI's claims computer system known as GIS. The other method is a hardcopy claims file. The latter files are routinely destroyed approximately two years after a claims file is closed in accordance with SGI's record retention and destruction schedule. In this case the relevant hardcopy files had been destroyed and SGI produced only copies of the documents in electronic form.

II RECORDS AT ISSUE

[8] Six sets of records each containing Auto Claim Summary Sheets and Vehicle Information Sheets. However, these sets differ as follows:

(a) Two of these sets relate to the claims history of the Thunderbird when the Applicant was the registered owner of that vehicle. These two sets also both contain what SGI refers to as a "vehicle damage estimate". However, only the first set contains copies of the digital photographs that were taken at the time of the appraisal. SGI advises us that the practice of placing digital photos and estimates on the claims system began approximately in the spring of 2001.

(b) Four sets of records relating to the claims history of the Thunderbird when the registered owner was someone other than the Applicant.

III ISSUES

Did SGI properly apply section 29 of *The Freedom of Information and Protection of Privacy Act* to the records withheld?

1. **How do we define "claims history" of a vehicle?**
2. **Is the vehicle claims history "personal information" as defined by section 24 of the Act?**
3. **Does the Act override the provisions of *The Highway Traffic Act* and *The Vehicle Administrative Act*?**

IV DISCUSSION OF THE ISSUES

1. How do we define "claims history" of a vehicle?

[9] On SGI's website, www.sgi.sk.ca, damage is defined as "*any loss of value incurred in an automobile accident.*"

[10] Further to this definition sections 82 and 83 of *The Highway Traffic Act* provide more detail as to what constitutes an "accident report".

> *"82 In this Part, "accident report" means a report in the form required by the administrator providing any particulars of an accident that, in the opinion of the administrator are necessary to establish, as far as possible, the causes of the*

accident, the persons responsible and the extent of any bodily injuries and property damage resulting from the accident.

83(1) In this section, "unidentified motor vehicle" means a motor vehicle:

(a) that causes:

(i) bodily injury to or the death of a person arising out of physical contact of the motor vehicle with the person or with the motor vehicle of which the person is an occupant; or

(ii) property damage arising out of physical contact of the motor vehicle;

(b) with respect to which:

(i) the names of both the owner and the person in charge of the motor vehicle are not ascertainable;

(ii) the name of the owner is not ascertainable and the motor vehicle has no person who was in charge of it; or

(iii) the name of the person in charge of the motor vehicle is not ascertainable and the owner is not liable for the actions of that person.

(2) Every person in charge of a motor vehicle that is involved in an accident shall:

a) notify the following persons as soon as is practicable after the accident:

(i) the person in charge of any other motor vehicle that is involved in the accident;

(ii) if any property in addition to a motor vehicle has been damaged as a result of the accident, the person in charge of that property; and

(b) provide the person mentioned in clause (a) with the following information:

(i) his or her name and address;

(ii) his or her driver's licence number;

(iii) the number of the certificate of registration of the vehicle; and

(iv) particulars of any insurance affecting the vehicle.

(3) In the circumstances mentioned in subsection (4), the person in charge of a motor vehicle that is involved in an accident shall:

(a) report the accident to the nearest peace officer as soon as is practicable after the accident; and

(b) provide the peace officer mentioned in clause (a) with any information or written statement concerning the accident that the peace officer may reasonably require to complete an accident report.

(4) The duty to report an accident to a peace officer pursuant to subsection (3) applies if the accident:

(a) involves bodily injuries or death;

(b) involves an unidentified motor vehicle;

(b.1) involves a motor vehicle for which no certificate of registration has been issued pursuant to this Act;

(c) involves a motor vehicle that was towed from the scene of the accident as a result of the accident; or

(d) involves a person in charge of a motor vehicle who was apparently under the influence of alcohol or drugs as to be incapable for the time being of having proper control of the motor vehicle.

(5) If the person in charge of a motor vehicle involved in an accident is physically incapable of making a report required pursuant to subsection (3), another occupant of that motor vehicle shall make that report.

(6) Every person who sustained a bodily injury as a result of a motor vehicle accident and who is physically capable of making a report shall make a report in the same manner as that required by the person in charge of a motor vehicle pursuant to subsection (3).

(7) A peace officer who receives a report of an accident shall:

(a) secure from the person making the report, or by other inquiries if necessary, any particulars of the accident necessary to complete an accident report;

(b) prepare an accident report; and

(c) immediately transmit the accident report to the administrator.

(8) The administrator may require:

(a) any person involved in an accident or having knowledge of an accident or of any bodily injuries or property damage resulting from an accident to furnish any information that is necessary to complete an accident report; or

(b) a peace officer to secure any information that is necessary to complete an accident report.

(9) In a prosecution for a contravention of this section, a certificate of the chief, deputy chief or person in charge of the police force or unit responsible for providing police services in the municipality or rural municipality where an accident mentioned in this section occurred that a report has not been filed is admissible as proof in the absence of evidence to the contrary of the facts stated in the certificate and of the authority of the person issuing the certificate, without proof of the appointment or signature of the person who completed the certificate."

[11] As discussed earlier, the record is comprised of four different types of documentation including:

(a) The **Auto Claim Summary Sheet** includes information about:

- Date of loss;
- Insured Information - this includes gender, address, birth date, phone numbers, employment and contact information;

- Vehicle Information - this includes the vehicle identification number or VIN, the make and model, the year, the body type, and class of vehicle;
- Policy Information - this includes the name of the policy holder, effective and expiry dates and policy number;
- Operator Information - this includes the same type of information as noted above under "Insured Information" but also includes licence information relating to the operator;
- Statement Information - includes location and particulars of an accident;
- Indicators - this includes information with respect to liability and coverage decisions made by SGI;
- Deductibles - this includes information about the claim deductible and the AutoFund deductible; and
- Reserves - this includes the reserve description, claim cover, and total amount of insurance and information about the appropriate reserve for the claim.

(b) The **Vehicle Information Sheet** includes Claim Information relating to the insured, Vehicle Information, Estimate Information, and Damage Description/Remarks.

(c) **Digital Photographs** taken at the time of the appraisal.

(d) The **vehicle damage estimate** includes information collected when the claims adjuster is assessing the damage and includes much of the same information described above, but contains more information about specific damage (prior damage, accident related) to the vehicle and associated costs to repair [labour, part replacements, additional costs (taxable and non-taxable)], and adjustments (betterment, insurance deductible, appearance allowance and related prior damage).

[12] SGI provided some information about practices in other provinces including that the Insurance Corporation of British Columbia, for a fee of $20 plus GST, will provide the following information about a vehicle:

- Whether or not a vehicle has a status of rebuilt, salvage, or altered;
- A list of any damage claimed through ICBC;
- The date the damage occurred and its dollar value; and
- Whether the vehicle has been imported from another jurisdiction.

[13] We visited the Insurance Corporation of British Columbia (ICBC) website[1]. The site, in addition to what is provided above, contains a sample of a Vehicle Claims History form that contains vehicle information including the total numbers of claims made involving the vehicle in question, claim dates, types of claims (vandalism, collision, no details available, theft from vehicle), amount paid and nature of payments.

[14] In Ontario it appears that collisions are linked to the driver or operator instead of the vehicle. In Alberta, a vehicle information report[2] is available but the name and personal information of the vehicle's current and previous owners has been excluded from the report.

[15] As demonstrated above, it is possible to strip details associated with the vehicle's damage and subsequent claims history from other data directly ascribed to the various owners of the vehicle at any given time.

2. Is the vehicle claims history "personal information" as defined by section 24 of the Act?

[16] The relevant provisions of the Act are as follows:

> *"24(1) Subject to subsections (1.1) and (2), "personal information" means personal information about an identifiable individual that is recorded in any form, and includes:*
>
> > *(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;*

[1] Available online: www.icbc.com/buy_car/vehicle_claims_history.html
[2] Available online: http://www.ama.ab.ca/cgi-ebs/registries/vir.jsp?menu=auto_vir

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) Repealed. 1999, c.H-0.021, s.66

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual's health services number as defined in The Health Information Protection Act;

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

(1.1) "Personal information" does not include information that constitutes personal health information as defined in The Health Information Protection Act."

...

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30."

[17] We considered the decision of the Saskatchewan Court of Appeal in General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance [1993] S.J. No. 601. At issue in that case was access to the current vehicle owner's name and address. It did not concern the claims history of a vehicle. Nonetheless, the Court held that the name and address of the registered owner of a vehicle did not constitute "personal information" within the meaning of the Act.

[18] The Court of Appeal carefully considered section 24(2)(e) and (3) which read:

> *"24(2) "Personal information" does not include information that discloses:*
> ...
>
> *(e) details of a licence, permit or other similar discretionary benefit granted to an individual by a government institution;*
> ...
>
> *(3) Notwithstanding clauses (2)(e) and (f), "personal information" includes information that:*
> *(a) is supplied by an individual to support an application for a discretionary benefit; and*
>
> *(b) is personal information within the meaning of subsection (1)."*

[19] The Court discussed this provision as follows:

> *"Given this qualification, we are all of the opinion that the information sought is not within the intendment of the definition of "personal information". The plain language of s. 24(1)(k) indicates that the bare name of an individual is not personal information. Furthermore, the plain language of s. 24(2)(e) indicates that details of a licence or permit are excluded from the operation of s. 24(1). "Details of a licence or permit" does not contemplate release of a core of personal data that one provides in confidence. One must take a practical approach when confronted with an issue of interpretation of this Act. It has endeavoured to provide a workable balance between the interests of public access and protection of legitimate personal privacy interests. One should look at the reasons for exemption from the disclosure requirements in determining whether the agency head has properly invoked a particular exemption.*
>
> *While there are compelling reasons for non-disclosure of personal details compiled in an agency database, this is not one of those cases in which the respondent seeks to obtain such information. Furthermore, s. 8 contemplates situations where a record must be edited to prevent a prohibited privacy intrusion.* *

*[*Footnote: Section 8 reads:*

> *Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.]*

In passing upon this question, we must examine the effect that disclosure would have on the interest that the exemption in s. 24(1) seeks to protect. In some instances, license applications might contain significant personal details. But the disclosure in this case involves no such request. The applicant seeks details of the license issued in respect of a specific automobile to which it retains title."

[20] I note the Court's decision to apply a contextual approach to the facts of that case. Mr. Justice Tallis cited the United States Supreme Court decision in United States v. Miller, 425 U.S. 435 (1976) in which cancelled cheques subpoenaed for evidence from a commercial bank were held not subject to Fourth Amendment protection. Tallis J. stated that:

> *"While I do not wish to be taken as adopting the position that commercial records such as cancelled cheques are not subject to s. 8 protection, I do agree with that aspect of the Miller decision which would suggest that in order for constitutional protection to be extended, the information seized must be of a "personal and confidential" nature. In fostering the underlying values of dignity, integrity and autonomy, it is fitting that s. 8 of the Charter should seek to protect a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. This would include information which tends to reveal intimate details of the lifestyle and personal choices of the individual. The computer records investigated in the case at bar while revealing the pattern of electricity consumption in the residence cannot reasonably be said to reveal intimate details of the appellant's life since electricity consumption reveals very little about the personal lifestyle or private decisions of the occupant of the residence.*
>
> *...*
>
> *The centralized database for vehicle registration records does not differ in principle from land registry or personal property security registry. A search to ascertain the name and last address of a land owner, does not offend any reasonable expectation of privacy. If a land owner is a potential defendant, one can readily ascertain her/his identity by a search of the "public" record -- a record that contains no significant personal detail. Similarly the Registrar of the Court of Queen's Bench maintains a Wills and Estates Registry for the Province of Saskatchewan. A search of this registry discloses whether letters probate or letters of administration have issued and if so, the name and address for service of the executor or administrator. We conclude that the Legislature did not intend to impede litigation by denying a prospective litigant essential information concerning the ownership of a motor vehicle. Reading the Act as a whole, we conclude that the information sought is not "personal information".*"

[21] Mindful of the direction from the Court of Appeal, I find that information about the claims history of a vehicle that does not identify anyone other than the registered owner(s) without identifying information is not captured by the definition of "personal information" in section 24(1) of the Act.

[22] This is consistent with the plain wording of section 24(1) of the Act and also with the dicta of the Saskatchewan Court of Appeal.

[23] SGI has indicated that if someone could link the name of individuals who have owned the vehicle in question with the information about accidents in which the vehicle has been damaged, that this could reveal personal information. For the reasons noted above, I find the name of the registered owner plus information about past damage to the vehicle would not be personal information of the individual for purposes of the Act.

[24] In order to prepare the record for disclosure, there will have to be substantial severing of information but this can be done with relative ease.

3. Does the Act override the provisions of *The Highway Traffic Act* and *The Vehicle Administrative Act*?

[25] Section 84 of *The Highway Traffic Act* provides, as follows:

> *"84(1) A written report or statement made or furnished pursuant to section 83 is deemed to be made without prejudice and for the information of the administrator.*
>
> *(2) The administrator shall keep any written report or statement mentioned in subsection (1) confidential and is not required to make any written report or statement available for public inspection.*
>
> *(3) The fact that any report or statement has been made or furnished pursuant to section 83 is admissible in evidence solely to prove compliance with that section, but the written report or statement is not admissible in evidence for any other purpose in any trial arising out of a motor vehicle accident.*
>
> *(4) Notwithstanding subsections (1) and (2), the administrator may make available to persons engaged in road safety research any information contained in any report received by it pursuant to section 83.*

(5) Subject to section 9 of The Vehicle Administration Act, no person who receives any information pursuant to subsection (4) shall make that information public in a form that would enable any particulars to be identified as being related to any specific person or business."

[26] As well, *The Vehicle Administration Act* provides as follows:

"8(1) Reports made to the administrator pursuant to this Act, other than reports made pursuant to section 93, are the property of Her Majesty in right of Saskatchewan and are not to be made public.

(2) Notwithstanding subsection (1), the administrator may, with the written consent of the person to whom a report relates, furnish the person named in the consent with the information contained in the report.

(3) Any person may obtain an abstract of his driver record on payment of the prescribed fee and provision of satisfactory identification.

9 The administrator shall provide a copy of any report made pursuant to section 83 of The Highway Traffic Act or section 30 of The Snowmobile Act, with respect to a motor vehicle accident, on request and on payment of the prescribed fee, to a person involved in an accident to which a report relates, or to a person authorized by him for the purpose, or a person who has paid or may be liable to pay for injury or damages resulting from the accident.

93(1) Every dealer shall, within the first five days of every month, forward to the administrator a statement signed by him, giving full particulars of all motor vehicles, whether new or second-hand, sold and delivered by him in Saskatchewan during the preceding month, or declaring that he has sold none during that period, and in the former case the statement shall contain, in addition to any further particulars required by the administrator, the name and address of the purchaser of each vehicle."

[27] To the extent that these provisions are inconsistent with the Act, they will not apply. The Legislative Assembly made the Act paramount to certain other legislation. Section 23(1) provides as follows:

"23(1) Where a provision of:

(a) any other Act; or

(b) a regulation made pursuant to any other Act;

that restricts or prohibits access by any person to a record or information in the possession or under the control of a government institution conflicts with this Act or the regulations made pursuant to it, the provisions of this Act and the regulations made pursuant to it shall prevail."

[28] Fourteen exceptions to the paramountcy provision are listed but none of them are relevant to this review.

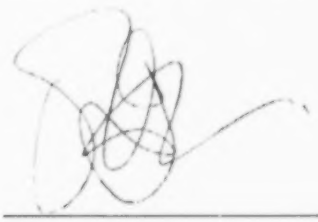
[29] I appreciate the cooperation of SGI throughout this review and found very useful the submission and materials furnished by SGI.

V RECOMMENDATIONS

[30] I find that the claims history of the motor vehicle including the names and address of the registered owner(s) is not personal information. It will be necessary, however to sever other identifying information pursuant to section 8 of the Act. I am providing Saskatchewan Government Insurance with a copy of the records in question with the areas to be severed indicated on the copy.

[31] I recommend that Saskatchewan Government Insurance release to the Applicant the claims history for his vehicle in redacted form.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of November, 2005.



R. GARY DICKSON, Q.C.
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